



**THE PNG  
MAGISTERIAL SERVICE**

DISTRICT COURTS OF PAPUA NEW GUINEA

**PRACTICE DIRECTIONS**

**Family and Sexual Violence Protection Order  
Rules**

**JANUARY 2009**

*DISTRICT COURTS ACT CHAPTER 40*

**PRACTICE DIRECTIONS FOR FAMILY & SEXUAL VIOLENCE**

***PROTECTION ORDER RULES***

NO. 1 of 2009

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***DISTRICT COURTS ACT CHAPTER 40***

**PRACTICE DIRECTIONS FOR FAMILY AND SEXUAL VIOLENCE**

***PROTECTION ORDER RULES***

**NO. 1 of 2009**

I, JOHN NUMAPO LLB (Honours); LLM., Chief Magistrate of Papua New Guinea, pursuant to Section 21A of the ***District Courts Act Chapter 40*** and all other powers enabling me, hereby make this Protection Order Rules 2009 (**Rules**) to provide for the practice and procedure of granting Interim Protection Orders in the District Courts.

These rules are intended to provide consistency in the District Courts and to enable the District Courts to issue Interim Protection Orders expeditiously at any time and at no cost to the applicant.

**1. Application.**

These Rules apply to a person seeking immediate protection from:-

- (a) actual or threatened physical and sexual violence; and or
- (b) actual damage or threatened damage to property.

**2. Interpretation**

In these Rules:-

“family” includes a person who is accepted as a member of a family, whether or not that person is related by blood or marriage.

“Protection Order” means an interim order issued by the District Court.

**3. Interim Protection Orders.**

- 3.1 A person may apply to the court for a Interim Protection Order at any time upon the laying of a complaint or an information.
- 3.2 The magistrate shall:-
  - (a) hear the application as soon as practicable; and



- (b) dispense with the requirement for the service of the application upon the defendant.
- 3.3 No filing fee is required for an application under these Rules.
- 3.4 An application for an Interim Protection Order shall:-
  - (a) set out the order sought and the grounds for which such order may be made; and
  - (b) be in the form prescribed in the schedule annexed to these Rules; and
  - (c) be supported by a sworn statement that is in the form prescribed in the schedule annexed to these rules; and
  - (d) include an undertaking by the complainant to pay damages to the defendant if the order is such that it should not have been issued by a court of competent jurisdiction at the first instance.

#### **4. Clerk of Court's Responsibility.**

- 4.1 The Clerk of Court shall immediately:-
  - (a) attend to a person seeking an Interim Protection Order; and
  - (b) make all necessary arrangements for an application for a Protection Order to be heard before a Magistrate.
- 4.2 The Clerk of Court shall ensure that the following documents are filed in support of an application for a Interim Protection Order and are in the forms prescribed in the *schedule annexed to these Rules*:-
  - (a) Application for a Protection Order;
  - (b) Sworn Statement;
  - (c) Interim Protection Order;
  - (d) Information or Complaint; and
  - (e) Summon Upon Information or Summon upon Complaint.

4.3 The Clerk of Court shall ensure that:-

- (a) the documents referred to in Subsection 4.2 are fully and accurately completed by the applicant and, if necessary, are accompanied by a medical certificate; and
- (b) a complaint or information contains a substantive course of action yet to be determined by the court.

## **5. Legal Representation**

At the hearing of an application for a Protection Order before a magistrate, the applicant may;

- (a) appear in person;
- (b) be represented by a lawyer; or
- (c) be represented by any of the following persons;
  - (i) a person in whose care the Complainant is in; or
  - (ii) a person who has control of the Complainant; or
  - (iii) an adult member of the Complainant's family; or
  - (iv) any other person with the leave of the court.

## **6. Joinder of Parties**

Where a person or institution who provides security and/or counseling to the applicant receives threats in relation to an application for a Protection Order, that person or institution may apply to the court to be joined in the proceeding and the court may accord that person or institution with the same protection as it gives to the Complainant.

## **7. Hearing of the Application for Protection Order**

7.1 Upon hearing an application for an Interim Protection Order, a court may, if satisfied, grant the Order to the complainant pending the determination of the substantive cause of action contained in the complaint or information.

7.2 The court may grant one or more of the following orders:

- (a) an order restraining the defendant or any other person from harassing, intimidating, using or threatening to use or apply force against the applicant;

- (b) an order restraining the defendant or any other person from entering the premises in which the applicant dwells; and or,
  - (c) an order restraining the defendant or any other person from entering the premises where the applicant works; and or,
  - (d) an order restraining the defendant from contacting the applicant by any form of communication; and or
  - (e) may dismiss the application
- 7.3 In granting a Protection Order, a court shall:-
- (a) fix a return date, not later than 14 days after the date of the order for a hearing of the substantive matter; and
  - (b) endorse the return date on the Interim Protection Order; and or
  - (c) include a statement in the Interim Protection Order authorising the police to arrest the defendant in the event the order is breached.
- 7.4 Any application to set aside the Interim Protection Order may be made before the same magistrate who issued the initial order.

## **8. Service of Process and Protection Order**

- 8.1 The order and the commencement process shall be served on the defendant as soon as practicable.
- 8.2 The Court shall direct a person (other than the complainant) to serve the Protection Order and commencement process on the defendant.
- 8.3 A sealed copy of the Protection Order shall be served on the Officer-In-Charge at any Police Station that is located within reasonable proximity to the residences of the applicant and defendant respectively.
- 8.4 Proof of service of the Protection Order and commencement process shall be filed in court as soon as practicable after service is effected.
- 8.5 If, by statement on oath or by affidavit for any reason personal service cannot be promptly effected the court may extend the return date and order for substituted service in accordance with Section 48 of the District Courts Act.



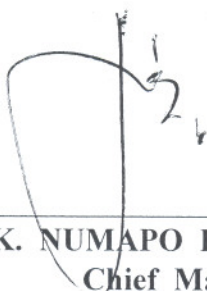
**9. Substantive Hearing**

- 9.1 The substantive hearing of the application shall be held on the date fixed by the magistrate unless an application is made by way of a motion by either of the parties to bring forward the date of the hearing.
- 9.2 At the hearing, the court may extend, amend or revoke the interim protection order.
- 9.3 Upon the hearing of the substantive application the court may issue permanent protective orders pursuant to sections 209 and 210 of the District Courts Act for keeping the peace and surety towards the complainant and be of good behavior for a period of time as determined by the court.

**10. Breach of the Protection Order.**

- 10.1 An interim Protection Order shall have the same effect, as if it were a permanent Protection Order.
- 10.2 If an interim Protection Order is breached the court shall issue a warrant of arrest for the defendant to be arrested and brought before the court to be dealt with according to law.

DATED this 22 ..... day of January ..... 2009



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**JOHN K. NUMAPO LLB (Honours); LL.M.**  
Chief Magistrate

## ANNEXTURES

### SCHEDULE of forms

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## SCHEDULE

### Protection Order Forms

*FORM I*

### Rule 3.4

\_\_\_\_\_ of 20 .

IN THE DISTRICT  
COURT HELD AT

(Write the Complainant name and address here)

**AND**

(Write the Defendants name and address here)

## APPLICATION FOR INTERIM PROTECTION ORDER

I, .....

( Write the full name of the complainant here)

of.....

( Write the complainant's address)

**APPLY for the following orders** (*delete as appropriate*)

- (a) Restraining Order to prohibit Defendant and his agent from applying physical or sexual violence
- (b) Restrain Defendant and his agent from threatening or using abusive language
- (b) Exclude defendant from the residence shared by Complainant and Defendant  
AT. ....  
(Give full address)
- (c) Prohibit Defendant from disturbing the Complainant in his/her daily life

**FORM I**

2.

**FOR:**

- a) Myself (*Complainant*)
- b) A Child/Children or members of the Family
- c) the Victim

*Give names* .....

.....

.....

**THE GROUNDS** are set out in the sworn statement attached.

DATED \_\_\_\_\_

Signed: \_\_\_\_\_

I, .....of.....

**AGREE** to obey any order this Court may make against me for costs or damages if the Court finds that I should not have made this application.

.....  
Signed by the Applicant

## FORM III

\_\_\_\_\_ of 20 .

IN THE DISTRICT COURT  
OF JUSTICE HELD AT

.....  
Complainant

\_\_\_\_\_

-v-

.....  
Defendant

### INTERIM PROTECTION ORDER

ON..... THE COURT heard an application from  
(date of hearing)

.....(Complainant)  
(name of complainant)

and **READING** the Documents placed before the Court, the **COURT MAKES THE FOLLOWING ORDER(S)** against the Defendant: -  
(Set out details of orders) :

**THE COURT FURTHER ORDERS** that the Police Officer in charge of the Police

Station at..... (insert name) shall serve this order and the  
court process on the Defendant.

If the Defendant \_\_\_\_\_ (*Insert name*) does not obey all of these orders then the police shall arrest *him/her* and bring *him/her* to court as soon as possible.

### WARNING TO THE DEFENDANT

- (1) If you \_\_\_\_\_ do not obey these orders then you  
(*insert name of Defendant here*)

can be arrested. You will then be brought before the court and may be fined

and/or sent to prison.

- (2) **SUBSTANTIVE HEARING.** The next hearing of this matter is

on:.....  
(*state here return date*)

- (3) **YOU MUST ATTEND**

If you disagree with this order you should go to the court and ask for an earlier hearing date.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 200 .

.....  
Magistrate



**FORM II**

IN THE DISTRICT  
COURT HELD AT

\_\_\_\_\_

BETWEEN:

Complainant/Informant

AND:

Defendant

**SWORN STATEMENT**

.....  
*name of person making statement (Write your full name)*

of: .....  
*(Write your full address)*

duly sworn make oath and say that the following is true: -

1. I am the Complainant.
2. I am applying on behalf of myself and/children of the Family or other persons:  
*(Cross out the words that do not apply)*

*(Write the names of the child or children or other persons on the lines below if any)*

.....  
.....  
.....

3. The Defendant and I are members of the same family. The defendant is:  
*(State the relationship between yourself and the defendant on the line below)*

.....  
.....

- [illegible]

5. The defendant lives: (If the defendant lives with you write WITH US  .....)

If the defendant lives somewhere else write where this is:  .....

6. My work is:  .....

7. *If you have been to see a doctor or have taken any of the children to see a doctor because of what happened you should tick the box and staple or clip the doctor's note to this form. Tick here*

8. I believe I need these orders for my/our protection (*Cross out OUR if you are just applying for yourself*)

9. Write down what happened and what the Defendant has done or has threatened to do to make you ask the court to help you

[illegible]

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

*(continue on separate handwritten paper if necessary)*

SWORN at \_\_\_\_\_ )

this \_\_\_\_\_ day of \_\_\_\_\_ 20 . )

\_\_\_\_\_  
Signature of Complainant

*(This must be signed in front of a Commissioner for Oaths. If you cannot find a Commissioner for Oaths you may swear this is true in front of the Magistrate)*

**BEFORE ME**

.....  
**A COMMISSIONER FOR OATHS**

**FORM IV**

PAPUA NEW GUINEA.

*District Courts Act 1963.*

*Act, Sec. 28.*

*Form 15.*

**COMPLAINT.**

The complaint of ..... of .....  
(complainants name) (address)

made this.....day of ....., 20.., before the undersigned, a Magistrate  
of a District Court, who says that on ....., 20.., at ...  
( date of event) (place of event complained of)

(state here below subject matter complaint of and remedy you seek).

.....

Made Before me this day of 200 at.....

.....  
**MAGISTRATE**



**FORM V**

PAPUA NEW GUINEA.

*District Courts Act 1963.*

*Secs. 28, 35. Dist. Court Act*

*Form 16.*

**INFORMATION**

The information of ..... of .....  
(complainants name) (address)

Laid this.....day of ....., 20.., before the undersigned, a Magistrate  
of a District Court, who (on oath) says that on ....., 20.., at .....  
( date of event) (place of event complained

(state the nature of offence below).

Laid/Sworn\* before me the day and year first above-mentioned at .....

.....  
**Magistrate**

\*Strike out whichever is inapplicable.

**FORM VI**

PAPUA NEW GUINEA.

*District Courts Act 1963.*

*Act, Secs. 41, 42, 44, 47. Dist. Ct. Act*

*Form 18.*

**SUMMONS TO A PERSON ON COMPLAINT**

\_\_\_\_\_ Complainant

\_\_\_\_\_ Defendant.

To \_\_\_\_\_ of .....  
(name of defendant) (defendant's address)

you (*state shortly the matter of the information below*):

These are therefore to command you to appear before the District Court at ... ..,  
on ....., 20.., at ... ..a.m./pm. to answer the complaint, and to be further dealt  
with according to law.

The complainant's address for service is ... ..  
at which all notices or documents may be served.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20..

.....  
**Magistrate/ Clerk of Court**

**FORM VII**

PAPUA NEW GUINEA

*District Courts Act 1963.*

*Act, Secs. 41, 42, 44, 47.*

*Form 17.*

**SUMMONS TO A PERSON ON INFORMATION**

\_\_\_\_\_ Informant.

\_\_\_\_\_ Defendant.

To \_\_\_\_\_ of .....  
(name of defendant) (defendant's address)

Whereas you have this day been charged by \_\_\_\_\_ of \_\_\_\_\_  
(name of informant)

before the undersigned, a Magistrate of a District Court, that on ..... 20.., at .....

you (*state shortly the matter of the information below*):

These are therefore to command you to appear before the District Court at ... ..,  
on ....., 20.., at ... ..a.m./p.m. to answer the information, and to be further dealt  
with according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20..

.....  
Magistrate/ Clerk of Court

*FORM VIII*

**PROOF OF SERVICE**

(to be endorsed on summons).

I, .....of .....  
make oath and say (or affirm) that I did on ....., 20....., at .....  
serve the within-named defendant with the within summons by delivering a copy of it to him  
personally, and at the same time showing him the original summons.

Signature \_\_\_\_\_

Date:

Sworn (or affirmed) before me at .....

this        day of        20 .

.....  
**Commissioner for Oaths**